IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9282 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARGOVINDBHAI M PANCHAL

Versus

AHMEDABAD DISTRICT CO OP BANK LTD.

Appearance:

1. Special Civil Application No. 9282 of 2002

MRS SANGEETA N PAHWA for Petitioner No. 1-8

MR TUSHAR MEHTA for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 29/10/2002

ORAL JUDGEMENT

This court had passed the order on 17.9.02 for

issuing notice for final disposal and pursuant to said order matter is taken up for final hearing today.

2. Rule. Mr.Tushar Mehta waives service of rule on behalf of respondent No.1.

3. The short facts of the case are that the respondent No.1 bank had filed a suit before the Board of Nominees being Lavad Suit No.2200/92 for recovery of Rs.56,39,339.25ps with interest and the said suit was filed against the respondent No.2 society. Ultimately, on 29.8.97 the judgment and award was passed by the Ld.Nominee. The respondent No.2 society preferred appeal being Appeal No.284/97 before Gujarat State Coop.Tribunal against the aforesaid judgment and award dated 29.8.97 passed in Lavad Suit No.2200/92. The petitioners herein claiming to be members of the respondent No.2 society submitted application Exh.14 copy whereof is produced at annexure "H" before the Gujarat State Cooperative Tribunal for being impleaded as party to the proceedings of the appeal. However, the learned tribunal on 1.4.02 passed the order whereby the said application Exh.14 was dismissed. It appears that thereafter the main appeal was heard by the tribunal and ultimately after hearing the respondent No.2 society and without giving opportunity of hearing to the petitioners herein on 30.7.02 the learned tribunal passed the judgment and order whereby the appeal is dismissed and the judgment and award of the Ld.Nominee is confirmed. Under the circumstances, the petitioners preferred this petition challenging the order passed by the tribunal below Exh.14 dated 18.4.02 as well as the final order dated 30.7.02 in Appeal No.284/97.

4. I have heard Mr.Pahwa learned advocate for the petitioners and Mr.Tushar Mehta for respondent Bank. Before I consider the matter, upon the query put up by the court regarding amounts to be deposited by the petitioners for showing their bonafides, Mr.Pahwa, learned advocate for petitioners has made statement upon the instructions received from his clients that all members of the society whose names are mentioned in annexure "H"(including petitioners herein) are ready and willing to deposit a sum of Rs.5,000/- each with the respondent No.1-Bank to show their bonafides.

5. Question involved in this petition is as to whether the tribunal was justified in rejecting the application of the petitioners who are the members of the Coop.Housing Society to be impleaded as party to the proceedings of the appeal. Both sides, namely, the

petitioners as well as respondents have raised various contentions which are concluded by the decision of this court in the matter of Sureshbhai Babubhai Sunara vs Ahmedabad Dist.Coop.Bank Ltd reported in 2002(3) GLH 176. In the said case at para 10 of the judgment this court observed as under:

"Primafacie, it appears that in every cooperative society the members are not the third party to any litigation of the society, more particularly, when it is for the purpose of recovery of amount from the property of the society which is given by the society to its members for utilisation of their leasehold rights or otherwise. The society, if remain lethargic, or does not defend the rights properly, it can not be said that the members have just to act like silent spectators of the functioning of inefficient or dummy office bearers and have to accept or abide by the order though they have remedy to recourse available under law. In a given case, if the organiser or developer for the reasons best known to them or some office bearers of the society for the reasons best known to them may not to prefer appeal against the award of the Nominee, but if the members of the society who are going to be directly affected by the award of the Nominee, if desire, they have right to prefer appeal on the ground that they are directly aggrieved by the award of the Nominee. In a Housing Cooperative Society, when the members have been allowed to occupy the property and on account of some debt outstanding against the society which is to be recovered from the property which is under the occupation of the members, it can not be said that the members are not affected or aggrieved by the award of the Nominee. Under the circumstances, I am of the primafacie view that the members of the society can be said to have been aggrieved by the award of the Nominee for the recovery of the amount from the property of the society which is under occupation of the members concerned."

6. In view of the above, it is clear that the tribunal while deciding the application Exh.14 as per order dated 18.4.02 has not taken into consideration the above referred aspects of the case and has rejected the application of the petitioners mainly on the ground that the same is with a view to delay the proceedings of the recovery. In my view, the tribunal ought to have allowed the petitioners to be impleaded as party to the

proceedings of the appeal and ought to have given opportunity of hearing to the petitioners for making their submissions at the time when the appeal was to be heard and decided. However, since the said aspect is not taken into consideration by the tribunal, I am of the view that the tribunal has committed error apparent on the face of record and therefore the order dated 18.4.02 below application Exh.14 deserves to be quashed and set aside.

7. As a consequence of the aforesaid discussion and as a necessary implication, since the appeal itself is decided without giving opportunity of hearing to the petitioners, the order dated 18.4.02 passed by the tribunal below application Exh.14 and final judgment and order passed by the tribunal dated 30.7.02 in Appeal No.284/97 can not be sustained in the eye of law since the same would result into breach of principles of natural justice as it is admitted position that the petitioners were not given any opportunity of hearing by the tribunal when the appeal came to be decided finally. However, petitioners and others of application Exh.14 can be conferred with right to have fresh hearing if bonafides are shown with a view to invoke equitable jurisdiction of this court.

8. In view of the aforesaid discussion, the following directions would meet with the ends of justice:

(i) Each of petitioners and each of others whose names are mentioned in application Exh.14(annexure "H" of present petiion) shall deposit a sum of Rs.5,000/- with the respondent No.1 Bank within a period of two months from today.

(ii) After the amounts are deposited by the petitioners and the persons concerned as ordered earlier the order passed by the tribunal dated 18.4.02 passed below application Exh.14 and judgment and order dated 30.7.02 shall not remain in operation and the tribunal shall rehear the appeal afresh after giving opportunity opportunity of hearing to all parties to the Appeal No.284/97 and shall also give opportunity of hearing to the petitioners and decide the appeal afresh in accordance with law. The amount of Rs.5,000/- deposited by the above referred persons shall be subject to outcome of appeal and the Tribunal will be at liberty to pass appropriate final orders while deciding the appeal afresh.

9. It is clarified that if the petitioners or the

above referred persons concerned fail to deposit the amounts as indicated earlier the orders passed by the tribunal shall remain in operation and the respondent No.1 Bank shall be at liberty to recover the amounts as per the judgment and award in accordance with law.

10. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. There shall be no order as to costs.

29.10.02 (JAYANT PATEL,J)